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BRIEF FOR PLAINTIFF IN ERROR.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1906.

No. 225.

AUGUSTA A. PETERSON AND IDA PETERSON, A MINOR, *Plaintiffs in Error*,

vs.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY, *Defendant in Error.*

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF TEXAS.

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KEYSTONE PTG. CO., FORT WORTH

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STATEMENT OF THE CASE.

This is an action at law in the United States Circuit Court for the Northern District of Texas at Fort Worth, brought by plaintiffs in error, Augusta A. Peterson and Ida Peterson, a minor, suing by her mother as next friend, both of whom are citizens of Texas, against the Chicago, Rock Island & Pacific Railway Company, an Illinois corporation, as defendant. The object and purpose of the

suit is to recover the sum of thirty thousand dollars damages which the plaintiffs allege they have sustained by reason of the negligent killing of John Peterson, an employe and servant of defendant, while he was engaged in its service at Chickasha in the Indian Territory, on the 19th day of October, 1903. The said John Peterson at the time of his death was a citizen of Texas, residing at Fort Worth, and was the husband of the plaintiff, Augusta A. Peterson, and the father of the minor plaintiff, Ida Peterson. It was charged in the petition that the death of the said John Peterson was occasioned by the culpable negligence of the defendant and that plaintiffs had thereby sustained actual damages in the amount sued for. It was further charged that defendant was then engaged in carrying on its business in the State of Texas, in the name of, and through the Chicago, Rock Island & Gulf Railway Company, a Texas corporation, which it was alleged was an ancillary or subsidiary corporation of the defendant, and which was then and there being controlled and dominated, and whose lines of railway were being operated by defendant as a part of the Rock Island System of railways. The petition charged in effect that The Chicago, Rock Island & Gulf Railway Company was the agent in Texas of the defendant company and that it had been incorporated into said system and that it was under the complete domination and control of defendant. It was further charged that S. B. Hovey, the Vice-President and General Manager of the Texas Company, who resides in Tarrant County, Texas, was also the general manager and local agent in Texas of the defendant. It was also alleged that F. E. Merrill was the local agent in Tarrant County, Texas, of said defendant, and that M. E. Sebree was the local agent in said County and State for it. (Tr. pp. 1 to 5.) Service of citation was had on the defendant by serving the parties above named as its agents in Tarrant County, Texas, in the manner provided by the Statutes of the State of Texas and by the rules of the trial Court. (Tr. pp. 7 to 11.) The defendant, without answering to the merits, moved to quash the service on the ground that neither of the parties thus served was at the time of such service its agents. (Trans. p. 12.) In support of said motion, the defendant filed the ex parte affidavits of each of said alleged agents denying such agency. (Tr. pp. 12 to 14.) Thereupon the plaintiffs made an application for additional process in pursuance of a Statute of the State of Texas recently enacted. In this application, it was charged that A. L. Thomas, who resides in Tarrant County, Texas, was a train conductor engaged in handling trains over the tracks of the Chicago, Rock Island & Gulf Ry. Co., in the State of Texas, and over those of the defendant beyond the line of said State, and further that he was thus engaged in handling passenger trains over the tracks of both of said companies and across the State line between Fort Worth, Texas, and Caldwell, Kansas, and that he was an agent and representative of the defendant company residing in Tarrant County, Texas. It was further charged that V. N. Turpin, who resides in Fort Worth, Texas, was a ticket

agent engaged in selling tickets and making contracts for transportation, for and in behalf of the defendant company in the City of Fort Worth and over the line of the Chicago, Rock Island & Gulf Ry. Co. in the State of Texas, and over the lines of the defendant beyond said State line, and further that he was an agent and representative of the defendant company in said State and County. (Tr. pp. 14 and 15.) Upon this application new process was duly issued and served on the defendant by serving the parties named as the agents and representatives of defendant in said County and State. (Tr. pp. 15 and 16.) Defendant thereupon filed its supplemental motion to quash this service also, on the ground that the parties served were not, as alleged, the agents or representatives of the defendant (Tr. p. 17), and in support of such motion it filed the exparte affidavits of said parties, each denying for himself that he was an agent or representative of the defendant, but otherwise admitting the facts to be as charged. (Tr. pp. 18 and 19.) The Marshal's returns on the several citations above specified, were in the usual form and disclosed proper service on the parties therein respectively named as the defendant's agents, and such returns in each instance recited that the party thus served was the local agent in Tarrant County, Texas, of the defendant. (Tr.pp. 8, 10, 11 and 16.) In the return on the writ served on Mr. Hovey it was also recited that he was the "general manager" of defendant at Fort Worth, Tarrant County, Texas. (Tr. p. 8.) The issue thus joined upon the motion and supplemental motion to quash the service on the defendant was heard by the trial Judge who, after hearing the agreements of counsel and the evidence introduced sustained the motions and dismissed the cause at plaintiff's cost for want of jurisdiction over the defendant. To this ruling of the Court the plaintiffs duly excepted. (Tr. pp. 19 and 20.) They reserved their exception by a proper bill which was duly prepared, settled, approved and filed. (Tr. pp. 20 to 53.) The trial Judge by his certificate duly filed herein, has certified to this Honorable Court for its decision the question as to whether or not the Circuit Court, under the facts disclosed by the plaintiff's bill of exception, acquired jurisdiction over the defendant by the service of the process as shown in said bill, and as to whether or not said Court erred in dismissing said cause for want of jurisdiction over said defendant. He further certifies "that the judgment herein rendered is based solely on the want of jurisdiction of this Court over said defendant to require it to appear and plead herein, and that no question other than the one of jurisdiction as set out was determined by said judgment. (Tr. p. 54.)

FACTS DISCLOSED BY THE BILL OF EXCEPTIONS.

In addition to the facts above recited, the bill of exceptions shows the following facts, all of which were either admitted or proved, viz: It was agreed by counsel for the respective parties

as follows, to-wit: "The Chicago, Rock Island & Pacific Railway Company is a consolidated corporation, chartered under the laws of Illinois and Iowa. It has been an existing railroad corporation for over twenty years. In June of the year 1892, and for some years prior to that time, the said railway company owned and operated a line of railway from the city of Chicago in a southwesterly direction through the States of Illinois, Iowa, Missouri and Kansas to Mineo, Indian Territory. During the year 1892 this company extended its line from Mineo, Indian Territory, in a southerly direction to the north boundary line of Texas, in Montague County.

"The Chicago, Rock Island & Texas Railway Company was a corporation organized under the laws of Texas on the 15th day of July, 1902. It had an authorized capital stock of three million dollars in shares of one hundred dollars each, of which seven hundred and fifty-four shares were subscribed for at the time of its organization. Below is a list of the names of the stockholders and the number of shares of capital stock of this company subscribed for by each, at its original organization:

Name	Residence	Shares
M. A. Low	Topeka, Kansas	745
W. W. Phelps	Topeka, Kansas	1
C. F. Jilson	Topeka, Kansas	1
A. G. Hastick	Topeka, Kansas	1
W. F. Evans	Topeka, Kansas	1
C. H. Thompson	Hennessey, O. T	1
J. T. Harris	Belcher, Texas	1
H. F. Weber	Bowie, Texas	1
Z. T. Lowrie	Bowie, Texas	1
J. H. Matthews	Bowie, Texas	1
Total		754

At the time this company was organized, M. A. Low was one of the General Attorneys of the Chicago, Rock Island & Pacific Railway Company, and had been for a number of years; W. F. Evans was his Assistant and had been for a number of years; C. F. Jilson was Assistant Treasurer of said company at Topeka, Kansas, and had been for a number of years; C. H. Thompson had been employed in securing right-of-way for the same company. None of the other stockholders had ever been connected in any capacity with the Chicago, Rock Island & Pacific Railway Company.

Under the Charter of the Chicago, Rock Island & Texas Railway Company, it was authorized to construct a line of road from the north boundary line of Texas at a point in Montague County in a southerly direction through Montague, Wise and Parker Counties; the charter being afterward amended, authorized the construction into Tarrant County. This charter authorized the issuance

of first mortgage bonds amounting to fifteen thousand dollars per mile for construction and not exceeding five thousand dollars per mile for equipment.

"When the Chicago, Rock Island & Pacific Railway Company constructed its line to a point near the north bank of the Red River north of Montague County, construction work stopped for a period of time. The Chicago, Rock Island & Texas Railway Co. began the construction of its line at the north line of the State in Montague County some time after the Chicago, Rock Island & Pacific Railway Co. stopped work at a point north of Red River. After construction work began on the Chicago, Rock Island & Texas Railway Company south of Red River, the Chicago, Rock Island & Pacific Railway Company constructed its line from the point where work had stopped north of Red River to a connection with the Chicago, Rock Island & Texas Railway at the State line. The Texas Company finished the construction of its line into Fort Worth in the latter part of 1893. Some of the same contractors who constructed the Chicago, Rock Island & Pacific Railway from Minco south to Red River also took contracts for work on the Texas line.

On the 2nd day of January, 1893, after the Chicago, Rock Island & Texas Railway Company had constructed and was operating its line as far south as Bowie, Texas, it entered into an agreement with the Chicago, Rock Island & Pacific Railway Company, a true copy of which is hereto attached and marked "Exhibit A" for identification. This agreement went into effect immediately after it was executed, and was acted upon and observed by said companies until the 14th day of April, 1903, when the same was canceled under authority of the Board of Directors of each company by a written agreement, a true copy of which is hereto attached, marked "Exhibit B" for identification.

After the Chicago, Rock Island & Texas Railway Company had constructed its line, it issued first mortgage bonds to the extent of fifteen thousand dollars per mile thereon and these bonds were purchased by the Chicago, Rock Island & Pacific Railway Company, for which it paid the Texas line one hundred cents on the dollar. The Chicago, Rock Island & Texas line cost a large sum of money in excess of the amounts for which it issued bonds, which additional cost was paid by application of money subscribed by stockholders and by borrowing from the Chicago, Rock Island & Pacific Railway Company, which money so borrowed has long since been returned with interest.

At the time the Chicago, Rock Island & Pacific Railway Company constructed its line to Red River there was no town or city at that particular point but there were towns and cities south, east and west of there in the State of Texas, and a railroad line, being a part of the Missouri, Kansas & Texas Railway of Texas, nine miles south of that point.

When the Chicago, Rock Island & Texas Railway Company was first organized its general offices were located at Bowie, Montague County, Texas, and remained there for some time, until the charter was amended removing them to Fort Worth. The first general officers elected by the Chicago, Rock Island & Texas Railway Company and their residences were as follows: M. A. Low, Topeka, Kansas, President; J. C. McCabe, Bowie, Texas, General Freight Agent; and H. F. Weber, Bowie, Texas, Vice-President, Superintendent, Secretary and Treasurer. All these men prior to the time they were elected officials of the Chicago, Rock Island & Texas Railway Company had been employed in some capacity by the Chicago, Rock Island & Pacific Railway Company. In 1893 S. B. Hovey was elected Vice-President of the Texas Company and remained the Vice-President and Superintendent of the Chicago, Rock Island & Texas Railway Company from that date until it was sold out under an Act of the Legislature in 1903. Mr. M. E. Sebree, who was served with citation in this case, was for a number of years and until the date of its sale, Trainmaster of the Chicago, Rock Island & Texas Railway Company and Assistant Trainmaster of the Chicago, Rock Island & Pacific Railway Company, with jurisdiction on that line up to Chickasha, Indian Territory. Prior to the time he was employed by the Chicago, Rock Island & Texas Railway Company he had been employed by the Chicago, Rock Island & Pacific Railway Company as brakeman, conductor, etc. M. A. Low of Topeka, Kansas, remained the President of the Chicago, Rock Island & Texas Railway Company from its organization until the 8th day of November, 1900, during all of which time he was one of the General Attorneys of the Chicago, Rock Island & Pacific Railway Company. The Chicago, Rock Island & Texas Railway Company never issued or sold any equipment bonds, but before it was sold out under special act of the Legislature to the Chicago, Rock Island & Gulf Railway Company, it had purchased and was the owner of between one thousand and twelve hundred freight cars of various kinds. During the time it had no equipment of its own, it rented rolling stock from various railway companies, but principally from the Chicago, Rock Island & Pacific Railway Company, and paid therefor prices prevailing between other lines of railway in the State of Texas.

After the Chicago, Rock Island & Texas Railway Company constructed its line into Fort Worth from Bowie, and after the execution of the contract between it and the Chicago, Rock Island & Pacific Railway Company of date of January 2nd, 1893, most of the passenger and freight trains running over its line from Red River to Fort Worth and from Fort Worth to Red River were operated beyond its lines as the trains of the Chicago, Rock Island & Pacific Railway Company. The employes operating these trains were under the control of, and paid by the Chicago, Rock Island & Texas Railway Company while working on its line, and they were also under the control of and paid by the Chicago, Rock Island &

Pacific Railway Company while on its line. The equipments in the various trains went as far north as the business justified, some of the passenger equipment going as far as Chicago and some to Kansas City, while the freight equipment stopped at points beginning at Chickasha and from there north wherever the freight was destined. The passenger equipment coming south stopped at Fort Worth, and the freight equipment where the freight was handled in carload lots went to destination wherever that might be.

Whenever necessary the Texas Company would operate a local train to handle freight between Fort Worth and Red River, but as a general rule the through service maintained took care of this business. It operated a local freight and passenger train between Bridgeport and Jacksboro and afterwards to Graham from the time this branch was built until it was sold out, which was several years. On the through freight trains the run made by the crews was from Fort Worth to Chickasha, and on the through passenger trains the run made by the crews was from Fort Worth to Caldwell, Kansas, these crews being handled and paid as above set forth. Outside the Pullman cars, which were in each passenger train, nearly all the passenger equipment used by the Chicago, Rock Island & Texas Railway Company belonged to the Chicago, Rock Island & Pacific Railway Company, for which it paid rental as provided for under the terms of the contract herein first referred to.

Defendant's witnesses will testify that the Texas Company paid no part of the cost of operating the Chicago, Rock Island & Pacific Railway, nor did the Pacific Company pay any part of the cost of the operation of the Chicago, Rock Island & Texas Railway, nor did either of them participate in the earnings of the other The relationship between the companies is fully disclosed by the terms of the contract dated January 2nd, 1893, which was observed up to the time of its cancellation.

The passenger conductors, brakemen, and train guards wear regular train uniforms and on the lapel of the coat are the words "Rock Island" and on the cap is the word "Conductor," "Brakeman," or "Porter." Any member of these train crews, while working on the line of the Texas Company may be discharged by the proper officer of that company; and while working on the line of the Pacific Company may be discharged by the proper officer of that company. Either company of course employs additional men when needed.

At the time the contract of January 2nd, 1893, was canceled the Chicago, Rock Island & Texas Company was operating about a hundred and forty miles of road, and the Chicago, Rock Island & Pacific Company was operating about three thousand three hundred miles. For a considerable time after the Chicago, Rock Island & Texas Railway Company was built into Fort Worth it employed and maintained at its Fort Worth office a train dispatcher who gave orders for the movement of trains over its line, but as a matter of economy this was abolished, and the Texas Company paid a part of

the salary of the train dispatcher located at Chickasha to give orders for the movement of trains over its rails.

On the 22nd day of September, 1903, the Chicago, Rock Island & Texas Railway Company, under authority of a special act of the Legislature known as Senate Bill No. 161, was purchased and absorbed by the Chicago, Rock Island & Gulf Railway Company, and since that time has ceased to exist as a railroad or to do any business as such.

At the time the Gulf Company purchased the Texas Company it had constructed and was operating a line of road from Fort Worth, in Tarrant County, to Dallas, in Dallas County. The Chicago, Rock Island & Gulf Railway Company now owns and operates three hundred and eighty-six miles of road, all of which is located inside of the State of Texas. It does not own any railroad outside the State of Texas. It owns at the present time about sixteen hundred cars, including ballast, refrigerator and cattle cars, twenty locomotives and eight cabooses, but does not own any passenger equipment other than the Pullman cars which are used in each of its passenger trains, it rents its passenger equipment from the Chicago, Rock Island & Pacific Railway Company and pays therefor current rental charges by connecting lines in Texas. The train crews on both the through passenger and freight trains are handled in the same way that they were when the line into Fort Worth was operated by the Chicago, Rock Island & Texas Railway Company, but the Chicago, Rock Island & Gulf Company is now operating in many places local trains between local points in Texas.

The following is a list of stockholders and the amount of stock of the Chicago, Rock Island & Gulf Railway Company owned by each:

Wm. Wesley Johnson	3850
S. B. Hovey	1
N. H. Lassiter	1
J. C. McCabe	1
W. G. Newby	1
H. C. Holloway	1
J. B. Wilson	1
W. B. Leeds	1
B. L. Winchell	1
Robert Mather	1
H. B. Low	1
Total	3860

Mr. Wm. Wesley Johnson is a resident of New York, N. Y.; Messrs. S. B. Hovey, N. H. Lassiter, J. C. McCabe, W. G. Newby and H. C. Holloway are residents of Fort Worth, Texas; Mr. J. B. Wilson is a resident of Dallas, Texas; Messrs. W. B. Leeds, B. L. Winchell, and Robert Mather, are residents of

Chicago, Illinois; Mr. H. B. Low is a resident of El Reno, Oklahoma.

The Chicago, Rock Island & Gulf Railway Company is operating under a lease that part of the line of the Chicago, Rock Island & Pacific Railway Company which begins at the north boundary line of the State of Texas, extending northward to the town of Terral, Indian Territory, a distance of about 1¼ miles.

Blank passes properly signed by different railroads, including the Chicago, Rock Island & Pacific, Texas & Pacific, Houston & Texas Central and other lines, are sometimes placed with S. B. Hovey, and when so placed he has the permission of such line to fill in the names of parties, and countersigned, such pass is recognized by the line over which it is issued. The local ticket agents of the Chicago, Rock Island & Gulf Railway Company sell coupon tickets over the Chicago, Rock Island & Pacific Railway Company's line and nearly all other lines in the United States, which tickets are duly honored by the respective roads over which they read. The Chicago, Rock Island & Gulf Railway Company operates only one passenger train each way daily between Fort Worth and Dallas, while it operates two trains each way from Fort Worth north. It operates also only a local freight service between Fort Worth and Dallas, but no through freight service. Proper officials of the Chicago, Rock Island & Gulf Railway Company and of the Chicago, Rock Island & Pacific Railway Company exchange reports with each other as to the amount of exchange business done.

No dividends were ever paid on the stock of the Chicago, Rock Island & Texas Railway Company and none have been paid on that of the Chicago, Rock Island & Gulf Railway Company; the net earnings of the Chicago, Rock Island & Texas Railway Company were put into betterments and improvements and the same is the case with the Chicago, Rock Island & Gulf.

In 1897, L. G. Hastings, then Secretary of the Chicago, Rock Island & Texas Railway Company, reported to the Interstate Commerce Commission that the Chicago, Rock Island & Texas Railway Company was controlled by the Chicago, Rock Island & Pacific Railway Company through the ownership of a majority of its bonds. In 1899 he reported it as controlled by the Pacific Company through its ownership of a majority of its capital stock.

On the 2nd day of August, 1904, M. E. Sebree, who resides in Fort Worth, Texas, was trainmaster of the Chicago, Rock Island & Gulf Rilway Company, and was also assistant trainmaster of the Chicago, Rock Island & Pacific Railway Company between the north line of Texas and Chickasha, Indian Territory. He is paid by the Gulf Company for the work he does for it and by the Pacific Company for the work he does for it. S. B. Hovey is Vice-President and Superintendent of the Chicago, Rock Island & Gulf Railway Company and will testify that he is not connected with, nor does he perform any service for any other railroad.

After making certain changes and additions, the Chicago, Rock Island & Gulf Railway Company adopted the book of rules issued

by the Chicago, Rock Island & Pacific Railway Company for the control of the operation of its line, and such rules are now in force. The cars and engines belonging to the Chicago, Rock Island & Gulf Railway Company when in need of repairs, have the work done at its shops in Fort Worth and Dalhart, if the cars and engines are convenient to these two pints, otherwise the work is done at some other convenient place either on or off the line of the Chicago, Rock Island & Pacific Railway Company wherever the cars or engines may be at the time the repairs are needed.

On the 2nd day of August, 1904, the Chicago, Rock Island & Gulf Railway Company had a different president and altogether different officers from any of the lines above listed as included in the Rock Island System. The Chicago, Rock Island & Gulf Railway Company does not now and never has paid any part of the salary of any officer of the Chicago, Rock Island & Pacific Railway Company, or of any of the lines named as constituting the Rock Island System.

Before the Chicago, Rock Island & Gulf Railway Company purchased the Chicago, Rock Island & Texas Railway Company, the Chicago, Rock Island & Mexico Railway Company and the Choctaw, Oklahoma & Texas Railway Company, M. E. Sebree was trainmaster of the Chicago, Rock Island & Texas Railway Company and division trainmaster of the Chicago, Rock Island & Pacific Railway Company, with jurisdiction to Chickasha, Indian Territory. Since the purchase by the Gulf Company of the above named Texas lines Mr. Sebree's jurisdiction extends over what were the Chicago, Rock Island & Mexico Railway Company and the Choctaw, Oklahoma & Texas Railroad Company, otherwise there has been no change in his employment or jurisdiction for the past five to ten years.

The Chicago, Rock Island & Gulf Railway Company pays a portion of the salary of a joint train dispatcher located at Chickasha, Indian Territory, under the same character of arrangement which existed between the Chicago, Rock Island & Texas Railway Company and the Chicago, Rock Island & Pacific Railway Company. This train dispatcher in giving orders for the handling of trains on the Chicago, Rock Island & Gulf Railway Company is subject to the control, direction and supervision of the executive officers of the Chicago, Rock Island & Gulf Railway Company as if exclusively employed by it.

The rails of the Chicago, Rock Island & Gulf Railway Company on the line running from Fort Worth north connects at the State line with rails of the Chicago, Rock Island & Pacific Railway Company. The point of connection is somewhere near the middle of Red River on a bridge. At this particular point there is no town, station, or turnout and the trains going in either direction do not stop at said point. It was not possible to build a town or station at the exact point of connection.

"It is further agreed that A. L. Thomas, upon whom process has been served herein as conductor and agent of defendant, was at the date of said service and is now and has been for many years a conductor running on and handling passenger trains for the defendant, the Chicago, Rock Island & Pacific Ry. Co., the Chicago, Rock Island & Texas Ry. Co., and later on the Chicago, Rock Island & Gulf Ry. Co., after its purchase of the Texas Company, running and handling such trains between Fort Worth, Texas, and Caldwell, Kansas. That the run of said Thomas is now and has been from Fort Worth, Texas, to Caldwell, Kansas, as aforesaid, on both sides of the State line, and that Caldwell, Kansas, is the end of the first passenger division on said line north of Fort Worth; and it is further agreed that V. N. Turpin, upon whom process was served herein as the ticket agent of the defendant company, was at the date of the service of said process and has been for a long time ticket agent of the Chicago, Rock Island & Gulf Ry. Co., at Fort Worth, engaged in selling tickets for the said Chicago, Rock Island & Gulf Ry. Co., over its lines and also over the lines of the Chicago, Rock Island & Pacific Ry. Co., and all of its connections.

It is further agreed that the facts are that "Thomas is carried on the Pacific Company's pay roll and paid for services rendered while on that company's line north of the Texas State line; and is carried on the Gulf Company's pay roll and paid by the Gulf Co. for services rendered on its line south of the Texas State line; and that Turpin is carried on the Gulf Co's. pay roll alone, and is not carried on the Pacific Co's. pay roll and is not an agent of the Pacific Co.. unless the above stated facts make him one." (Tr. pp. 22 to 30.)

Appended to this agreement are the following exhibits, viz:

EXHIBIT "A."

"Articles of Agreement made and entered into this 2nd day of January, 1893, by and between the Chicago, Rock Island & Pacific Railway Company, a corporation organized and existing under the laws of the States of Illinois and Iowa, hereinafter called the Rock Island Company, party of the first part, and the Chicago, Rock Island & Texas Railway Company, a corporation organized and existing under the laws of the State of Texas, hereinafter called the Texas Company, party of the second part, witnesseth:

I.

Said Rock Island Company owns and operates among other lines of railway extending from the City of Chicago in the State of Illinois to a point on the south line of the Chickasaw Nation in the Indian Territory, where it connects with the railway of the Texas Company.

II.

The Texas Company owns and operates a railway from the point of conection with the railway of said Rock Island Company on the line between the State of Texas and the Indian Territory, extending thence in a southerly direction through the County of Montague to the city of Bowie, Texas, and is engaged in the construction of its railway between said city of Bowie and the city of Weatherford, in the County of Parker, State of Texas, and proposes to construct branches therefrom and extensions thereof, and desires to raise money to be applied thereto by the sale of its first mortgage bonds. It also desires to make a permanent arrangement with the Rock Island Company for the exchange of traffic.

Therefore, in consideration of the premises and of the several covenants, promises and agreements, hereinafter set forth, the parties do covenant, promise and agree with each other as follows:

ARTICLE I.

For the purpose of avoiding unnecessary repetition, as well as misapprehension, in the construction and performance of the covenants and agreements hereinafter set out, it is agreed:

Section 1. The word "traffic" when used in these articles shall be taken as equivalent of the phrase, "passengers and property received for transportation." The phrase "through traffic" shall be taken as the equivalent of "traffic" which can be transported with reasonable directness from the point of shipment to the point of destination, over a line composed in whole or in part, of portions of the railways of each of the parties hereto; and "local traffic" as the equivalent of "traffic which can be transported on the most direct line from the point at which it will originate to the point to which it shall be destined, wholly over the railway of one of the parties hereto;" the phrase "through line" as the equivalent of "a line composed in whole or in part of some portion of two or more railways over which through traffic, as above defined, can be transported;" the "point at which traffic originates" and "originating point" as the equivalent of "the place at which traffic is delivered by the owner or consignor to a common carrier for carriage over a through line;" "the point of destination" as "the point at which such traffic shall be delivered to the consignee."

Section 2. It is declared to be the purpose of the parties hereto by the execution of these articles and the performance of the several covenants, promises and agreements herein set out, to establish and operate through lines of railway, which shall connect when the same can be done with reasonable directness, all points on the lines of both of the parties hereto, treating all railroads with which either party shall have any traffic or running arrangements or in which it shall have any leasehold interest as a part of the line of the party hereto, with which it is

so related, and to secure the operation of all said lines as to through traffic, as they should be operated if all were owned by one corporation. Provided, however, that nothing herein shall be so construed as to confer upon any railway company which may have a railroad connecting with the line of either of the parties hereto any rights or privileges otherwise than upon and during the election and direction of the parties hereto, or as a successor or assignee of one of the parties hereto.

ARTICLE II.

The Rock Island Company covenants, promises and agrees with the Texas Company:

Section 1. That it will purchase of the Texas Company its bonds when they shall be offered to it by said Texas Company, to an amount not exceeding fifteen thousand dollars per mile for railway which shall have been actually constructed by said Texas Company. It will also purchase from said Texas Company all first mortgage bonds which shall be issued by it and secured by said first mortgage, payable on the 1st day of January, A. D. 1933, with interest at the rate of six per centum per annum, for the equipment of said railroad to an amount of par value equal to five thousand dollars per mile for railway actually constructed, not exceeding, however, in such par value the actual amount expended in the purchase of such rolling stock. It will pay for all bonds purchased of the Texas Company the par value thereof, in cash at the time of the delivery of the bonds.

Section 2. That it will, so far as it lawfully can, deliver to the railway of the Texas Company all west-bound traffic which may be received by it for transportation, to any point which can be reached with reasonable directness by through lines composed in whole or in part of some portions of the railways of the parties hereto, and that it will make all lawful and reasonable efforts to secure the transportation of all such through traffic which may be received by it over such through lines.

Section 3. It will furnish freight cars for the transportation of through traffic as nearly as shall be practicable in the proportion of its mileage to the entire mileage over which such traffic shall be moved between the points where it shall be received on the railways of the parties hereto and the points of destination or delivery to connecting carrier.

Section 4. It will receive from the Texas Company all through traffic which said Texas Company shall deliver to it in the performance of its covenants, promises and agreements herein contained; and that it will transport the same to destination when such destination is upon any of its railways, or to the proper connecting carrier, when such destination is beyond its own line.

ARTICLE III.

The Texas Company covenants, promises and agrees with the Rock Island Company as follows:

Section 1. That it will, so far as it lawfully can, deliver to the railway of the Rock Island Company, at the most accessible or convenient points, all east-bound through traffic which may be received by it for transportation to any point which can be reached with reasonable directness by a through line which is composed in whole or in part of a portion of the railways of the parties hereto; and that it will make all lawful and reasonable efforts to secure the transportation of all such through traffic which may be received by it over such through lines.

Section 2. That it will receive from the Rock Island Company at the point of junction, such west-bound through traffic as shall be offered to it by said Rock Island Company, at such points, and will safely and promptly transport and deliver the same to destination if upon its own railway, or to connecting common carrier when the point of destination is beyond its own line.

Section 3. It will furnish freight cars for transportation of through traffic, as nearly as shall be practicable, in the proportion of its mileage to the entire mileage over which such traffic shall be moved between the point at which it shall be received on the railway of the parties hereto and the point of destination or delivery to a connecting carrier.

ARTICLE IV.

The parties hereto mutually covenant, promise and agree:

Section 1. Each will construct and maintain its railways and appurtenances thereto belonging, in such condition as will enable it to promptly and safely transport and deliver all through traffic which may be delivered to it for transportation over any through line hereby established.

Section 2. All traffic which shall be received on the railway of either party hereto shall be transported over the most direct line from the points at which it shall be received to the points to which it shall be destined, or be delivered to a connecting carrier not a party herein.

Section 3. All through traffic received for transportation over any through line hereby established shall be way-billed from the point at which it shall be received on any railway of either party hereto to the point of destination, if upon any such railway, or to the point at which it shall be delivered to a connecting line.

Section 4. Each party shall control the movement of traffic on its own railways, and defray all expenses which may be incurred in moving and handling the same while under its control.

Section 5. Time schedules for running through passenger, freight and express trains shall always be made and agreed upon by the parties and shall be so made as to connect from the line of one railway to the line of the connecting railway without delay or hindrance; but it is distinctly understood that in making such schedules, the convenience of all parties shall be regarded, and that the through trains shall not be so arranged as to connect with any train operated by either one of the parties on its own railway to the serious prejudice of the other party except upon just compensation to the parties so prejudiced. If the parties shall not be able to agree upon the establishment, modification, alteration or abrogation of any schedule, either may require that the matter in dispute shall be determined by reference, as hereinafter provided.

Section 6. The rates on all east-bound through traffic which shall pass over any through line hereby established, shall be fixed from time to time by the Texas Company and the rates on west-bound through traffic shall be fixed by the Rock Island Company. If either party shall at any time feel aggrieved by any rate fixed by the other, it may make such grievances the basis of a complaint, which shall be determined by reference as hereinafter provided.

Section 7. All through rates shall be prorated between the parties hereto upon the basis of the mileage over which such traffic shall be transported, counting every mile of the railroad of the Texas Company as one and one-half miles and every mile of the railroad of the Rock Island Company as one mile.

Provided, that either party hereto may, at the end of each period of five years, demand a readjustment of the division of through rates and in case the parties hereto cannot agree upon such readjustment of such division, it shall be determined by reference, as hereinafter provided.

Section 8. Full and accurate accounts shall be kept by each party showing the kind and amount of through traffic which has passed over its railway, the places where it was received and those where it was delivered to the consignee or to a line connecting with the through lines hereby established with the amount received for transporting the same. A statement of its own account from the first to the last days of each month, both inclusive, shall be delivered by each party to the other, within twenty days immediately succeeding the last day of the month covered by such statement. Each company shall have the right by its attorney or agent to examine at any time during business hours, on business days the books, accounts and papers of the other party hereto, relating to the through business received and transported and shall also have the right to take transcripts of such books, accounts and papers. When statements are not disputed they shall be adjusted and balances paid within five days after the exchange of statements is completed. Balance due on account of through traffic shall be promptly paid without regard to other accounts which may be pending between the parties.

The Texas Company will also keep a full, true and accurate account of its receipts from all sources, and its disbursements for all purposes; and exhibit the same upon demand to the Rock Island Company or its duly authorized agent.

Section 9. Each of the parties will furnish its quota of cars for the transportation of through traffic so that the mileage shall be equalized as nearly as shall be practicable, and if any party shall furnish cars in excess of its proportion it shall be entitled to compensation for such excess at the rates usually allowed for car service. The Rock Island Company will, on request of the Texas Company, furnish all such mail, passenger and baggage cars as may be needed in transporting mails, baggage, and passengers over the railway of the Texas Company, together with such engines and other equipment as may be necessary to the operation of said Texas Company, and shall receive for the use of the same the compensation usually allowed at the time in the State of Texas for such use.

Section 10. Liability for damage to persons or property in transit over the through lines hereby established shall be borne and paid by the party upon whose railway the damage shall occur. When the location of the cause of the injury is concealed or unknown the damage sustained shall be borne and paid by the parties who share in the through rates charged for the transportation thereof, in the proportion in which such rates shall be divided.

Section 11. Cars of one of the parties hereto received on the line of the other, shall be promptly returned to the other, preference always being given to loaded cars. All carload freight shall be sent over the lines of the parties hereto without transfer, when the cars in which traffic is loaded are in good condition.

Section 12. The parties will join in operating through trains for the transportation of through traffic, and each will furnish power to move the same over its own tracks.

Section 13. If any difference shall arise as to the construction of these articles or in reference to the performance of any covenant, promise or agreement herein contained, either party may demand a decision of the same by referees. The party demanding the reference shall serve upon the other party a written notice of such demand, and the name of one disinterested person chosen by the demandant as referee. The party so notified shall, within ten days after receiving such notice, select a disinterested person to act as referee. If the party duly notified shall neglect or refuse to select a referee, within ten days after receiving such notice, the referee chosen shall select an additional referee. The referee thus chosen shall fix a time and place for the hearing and shall give the parties reasonable notice thereof. At the time and place named they shall proceed with the hearing, unless it shall be continued for cause shown. If the referee thus chosen shall unanimously agree upon an award or decision, and reduce the same to writing, it shall be binding and conclusive upon the parties. If they cannot agree, they shall make a statement of the facts which are not disputed and

then select a disinterested person as the third referee. To the board thus constituted shall be submitted the agreed statement of facts and such evidence as the parties may produce, concerning the disputed matters, reasonable opportunity to be heard to be given to each of the parties. The award or decision of the majority of the board thus constituted when reduced to writing and served upon all the parties, shall be binding and conclusive upon each.

Section 14. No differences which may arise, as to the construction or performance of any of the covenants, promises or agreements herein contained shall affect, while it remains undetermined, the manner of transacting business pursuant to these articles; but it shall be transacted and settlements and payments made as before the existence of such difference; and when it is finally determined by reference as above provided, or otherwise, payments and restitution shall be made by the respective parties, as may be required by the award of the referees or provided in the agreement of adjustment, as the case may be.

Section 15. If for any reason any of the covenants, promises or agreements in any of these articles expressed shall be adjudged void, such adjudication shall not affect the validity or obligation of any other covenant, promise or agreement which is in itself valid. A controversy as to the validity or construction of any covenant, promise or agreement shall not delay the performance of any other. In the event of the failure in law of any of the covenants, promises or agreements herein contained, steps shall be taken, and such contracts shall be made as shall be advised by counsel to carry into effect the purposes and intent of this agreement.

Section 16. This contract shall be obligatory on the parties for a term of nine hundred and ninety-nine years from the 1st day of January, A. D. 1893; and the Rock Island Company is expressly authorized to assign and transfer its interest in the same by mortgage or other conveyance of its railway and its railway property.

In Witness Whereof, the Chicago, Rock Island & Pacific Railway Company and the Chicago, Rock Island & Texas Railway Company have caused their corporate seals to be impressed hereon, and the signatures of their presidents and secretaries to be hereto affixed, the day and year first above written.

THE CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

(Signed) By R. R. Cable, President.

Attest: (Signed) W. G. Purdy, Secretary. (Seal.)

THE CHICAGO, ROCK ISLAND & TEXAS RAILWAY COMPANY.

(Signed) By M. A. Low, President.

Attest: (Signed) Harry F. Weber, Secretary. (Seal.)

(Tr. pp. 30 to 36.)

EXHIBIT "B."

The State of Texas, County of Tarrant:

Know all Men by These Presents: Whereas, heretofore on to-wit, the 2nd day of January, A. D. 1893, a traffic contract was entered into by and between the Chicago, Rock Island & Pacific Railway Company, a foreign corporation, signing by its president, R. R. Cable, and the Chicago, Rock Island & Texas Railway Company, a Texas railroad corporation, signing by its president, M. A. Low; and

Whereas, the Board of Directors of each of said companies have authorized and directed the annullment and cancellation of said contract,

Now Therefore, the said railway companies hereby mutually agree in consideration of the benefits that will accrue to each on account of the annullment and cancellation of said contract, that the same be and it is hereby canceled and annulled, and each party thereto is hereby fully released and relieved from each and every provision and obligation therein contained.

This contract is executed in duplicate.

In Testimony Whereof, witness the signature of each of the parties hereto, by its proper officer, attested by its secretary on this the 14th day of April, A. D. 1903.

CHICAGO, ROCK ISLAND & PACIFIC RAILWAY COMPANY.

By.....

Attest: .....Secretary.

CHICAGO, ROCK ISLAND & TEXAS RAILWAY COMPANY.

By.....

Attest: .....Secretary.

(Tr. pp. 36 to 37.)

The plaintiffs introduced in evidence the Twenty-fourth Annual Report of the Chicago, Rock Island & Pacific Ry. Co., defendant herein, for the year ending June 30th, 1904, to its stockholders and in which the following, among other things, appear as a part of said report:

"To the Stockholders of the Chicago, Rock Island & Pacific Railway Co.:

The Board of Directors submit their report of the operations and affairs of the Chicago, Rock Island & Pacific Ry. Co. for the fiscal year ending June 30th, 1904. They have included therein, operations and affairs of the operated lines and auxiliary companies forming the "Rock Island System."

In order to make exhibits comparative the figures for the last preceding year have been restated to meet changed conditions due to the including in this report the operation of the auxiliary companies.

These lines thus forming the Rock Island System are the following:

MILEAGE OPERATED.

The Chicago, Rock Island & Pacific Ry	6,760.74
The Chicago, Rock Island & El Paso Railway	111.50
The Chicago, Rock Island & Gulf Railway	386.92

On page 9 of said report, under the head of "Property" and "Franchises," occur the following:

During the year expenditures were made: For construction of extensions and completion of System lines as follows:

Fort Worth, Texas, to Dallas, Texas	$111,371.55
Yarnall, Texas, to Amarillo, Texas	108,615.64
Jacksboro, Texas, to Graham, Texas	32,138.96
Red River to Fort Worth, Texas	28,013.04
Texhoma (Texas State line) to Bravo, Texas	9,646.03
Texola (Texas State line) to Yarnall, Texas	2,328.30

In addition to the expenditures during the year as above, there has been transferred to property account sundry amounts expended prior to July 1st, 1903, for construction of new lines and shops, and purchase of equipment which have been heretofore stated in the system assets as "Advances for Construction and Equipment," the property represented by such amounts having been deeded to the Chicago, Rock Island & Pacific Railway Co. or the Chicago, Rock Island & Gulf Railway Co., $23,169.83.

There has also been transferred to this account the expenditures made prior to July 1st, 1903, for the purchase of shares of capital stock of the Burlington, Cedar Rapids & Northern Railway Company and the Rock Island & Peoria Railway Company, also cost of the stock of the Choctaw, Oklahoma & Gulf Railroad Company in excess of its par value and the value of bonds of the Chicago, Rock Island & Texas Railway Company, owned by the Chicago, Rock Island & Pacific Railway Company, the value of said property appearing upon balance sheets shown in prior year's report as "Stocks and Bonds of Constituent Companies," $16,446,009.73.

On page 11 of said report, under the heading "New Lines Open for Operation," the following statements are made, viz:

Additions have been made to the operated system—mileage since the last report as follows:

By the Chicago, Rock Island & Gulf Railway Company, Fort Worth, Texas, to Dallas, Texas, 33.26 miles, opened for operation in December, 1903.

Yarnall, Texas, to end of track west of Amarillo, Texas, 18.40 miles, opened for operation in November, 1903.

Corrections in measurements, Red River to Fort Worth, Texas, .83 miles.

Operated system mileage was decreased 18.22 miles between Yarnall, Texas, and Amarillo, Texas.

Fort Worth, Texas, to Dallas, Texas.—This line was completed and the line opened for operation by the Chicago, Rock Island & Gulf Ry. Co. December 1st, 1903. It is 33.26 miles in length, connecting with the line of the former the Chicago, Rock Island & Texas Ry. Co. at Fort Worth, and extending to Dallas, where, by an agreement with the Gulf, Colorado & Santa Fe Railway Co., it has the joint use of the latter company's terminal facilities.

The opening of this line gives the Gulf Company direct entrance into Dallas, enabling it to compete for the traffic of that important commercial center.

On page 12 of said report is the following statement, viz:

SYSTEM MILEAGE UNDER CONSTRUCTION.

By the Chicago, Rock Island & Gulf Ry. Co.:

Amarillo, Texas, to Texas-New Mexico Boundary.....69.87

Amarillo, Texas, to Tucumcari, N. M. The grading for a considerable portion of this line has been done from Amarillo westward.

It was deemed advisable, however, to suspend active construction until such time as the business outlook would warrant the expenditure necessary to complete.

CONSOLIDATION OF TEXAS LINES.

The Legislature of the State of Texas, by an act passed March 27th, 1903, authorized the sale of the railroads and properties of the Chicago, Rock Island & Texas Railway Company, extending from the Red River to Fort Worth, Texas, with a branch from Bridgeport, Texas, to Graham, Texas. The Chicago, Rock Island & Mexico Railway Company extending from the Texas-Oklahoma line near Texhoma to the Texas-New Mexico line at Bravo; and the Choctaw, Oklahoma & Texas Railroad Company, extending from the Texas-Oklahoma line near Texola, Texas, to Amarillo, Texas, to the Chicago, Rock Island & Gulf Railway Company which had constructed a line of railroad from Dallas, Texas, to Fort Worth, Texas, where it connected with the line first named above.

In accordance with the authority granted, the properties referred to were, by appropriate corporate action, deeded to the Chicago, Rock Island & Gulf Railway Company on December 1, 1903.

This consolidation permits the properties in question to be operated by one management instead of four separate sets of officials, as heretofore, resulting in economy of operation and greater efficiency in service.

In stating the assets and liabilities of the companies forming the System, the holdings of the Chicago, Rock Island & Pacific Railway Company in the bonds and capital stock of auxiliary lines, together with loans between system companies, have been eliminated from the liabilities and a like reduction made in the value of the assets; the figures as stated, therefore represent the value of the assets and the real liability without duplication.

By Order of the Board of Directors.

R. L. WINCHELL, President."

The genuineness of this report was conceded. (Tr. pp. 37 to 39.)

Plaintiffs also introduced in evidence the Second Annual Report of the Board of Directors of the Rock Island Company, to its stockholders for the year ending June 30th, 1904, and in which the following statements appeared, viz:

"To the Stockholders of the Rock Island Company:

The Board of Directors herewith submit their report of the Rock Island Company for the fiscal year ended June 30, 1904, together with data and information concerning the affairs of the companies in which your company is interested through ownership of stock.

The Rock Island Company is the owner of the entire capital stock, except directors' shares, of the Chicago, Rock Island & Pacific Railroad Company, a corporation of the State of Iowa.

The Chicago, Rock Island & Pacific Railroad Company owns 695,574.75 shares of the capital stock of the Chicago, Rock Island & Pacific Railway Company, a corporation of the States of Illinois and Iowa, and 286,349 shares of the common capital stock of the St. Louis & San Francisco Railroad Company, a corporation of the State of Missouri.

Each of the two latter companies operates independently its lines of railway and each is interested through the ownership, directly or indirectly, of at least the majority of the capital stock, in certain subsidiary companies, each of which operates its property independently. The lines of the Chicago, Rock Island & Pacific Ry. Co., including lines formerly of the Choctaw, Oklahoma & Gulf Railroad Company, the Burlington, Cedar Rapids & Northern Ry. Co., and the Rock Island & Peoria Ry. Co., together with the lines of its subsidiary companies, namely, the Chicago, Rock Island &

Gulf Ry. Co. and the Chicago, Rock Island & El Paso Ry. Co. comprise what is known as the "Rock Island System."

As the Rock Island Company is the owner of the entire capital stock, except directors' shares, of the Chicago, Rock Island & Pacific Railroad Company, the income of both the companies is included in the following statement:

This report was made by order of the Board of Directors, was dated October 17th, 1904, and was signed by Robt. Mather, President. Appended to this report as a part of it under the head of "Statements and Exhibits, Rock Island System Lines," was the following statement, to-wit:

On page 23 of said report, under the heading of "Rock Island System—State of Mileage Operated:"

The Chicago, Rock Island & Gulf Ry. Co.:

Terral, I. T. (Red River), to Dallas, Texas	126.67
Bridgeport, Texas, to Graham, Texas	53.29
Texhomo, O. T., to Bravo, Texas-New Mexico State Line	91.75
Texola, O. T. (Texas State line), to Amarillo, Texas	112.97
Total Chicago, Rock Island & Gulf Ry. Co.	386.68

Plaintiffs also introduced in evidence a railroad folder of date July 10th, 1904, on the back of which was printed in large white letters on a dark background:

"ROCK ISLAND SYSTEM"

"Time Table."

And in which appeared the names of the Chicago, Rock Island & Pacific Ry. Co., the Chicago, Rock Island & El Paso Ry. Co., and the Chicago, Rock Island & Gulf Ry. Co., together with a list of the names and residences of the Passenger, Freight and Traveling Agents of said roads, respectively, and showing also a schedule of passenger train service on all of said lines.

On the inside cover of said folder is a map on which is traced or printed in heavy solid black, the lines of the Chicago, Rock Island & Pacific Ry. Co., the Chicago, Rock Island & El Paso Ry. Co., and the Chicago, Rock Island & Gulf Ry. Co., so connected as to show them all belonging to the same system. Said lines all being the same in size and color, and below which said map on said page is printed the following:

"THE ROCK ISLAND STATES OF AMERICA."

"The Rock Island System covers a territory which is 1,000 miles long by 1,000 miles wide, supports a population of more than 21,000,000 people and is capable of supporting at least four times

that many. The area of this territory is as great as the combined area of France, Germany, Italy, Spain, Austria-Hungary, Denmark, The Netherlands, Turkey, Switzerland and Greece, and its productive capacity is greater.

"Here are produced more than half the wheat, more than half the corn and nearly half the cotton, silver and gold produced in the United States."

This is the folder referred to by Mr. Hovey in his testimony.

The annual report of the C. R. I. & P. Ry. Co., above mentioned, shows that the Board of Directors of said company consists of thirteen members, while the executive committee of said company consists of eight members. The report of the Rock Island Company, above mentioned, shows that the Board of Directors of said company consists of sixteen members while its Finance Committee consists of six members. Eleven members of the Board of Directors of the Railway Company are also members of the Board of Directors of the Rock Island Company. Five members of the Executive Committee of the Railway Company are also members of the Finance Committee of the Rock Island Company. All the officers of the Rock Island Company, as given in said report of said company were, with two exceptions, shown to be also officers of the Railway Company as disclosed by the report of said company.

These reports show that a majority of the officers and directors of each of said companies are common to both of them. (Tr. pp. 39 to 41.)

The plaintiffs introduced S. B. Hovey, who testified to substantially the following facts, viz: At the time of the service of the citation on him he was, and yet is, the Vice-President and Superintendent of the Chicago, Rock Island & Gulf Railway Company, residing in Fort Worth, Tarrant County, Texas. He has held this position with said company ever since its organization and ever since it absorbed the Chicago, Rock Island & Texas Railway Company on the 22nd day of September, 1903. Prior to that time he had held the same position with the last named company since 1893. Prior to this time he had been for many years an employe of the defendant. The defendant and the Chicago, Rock Island & Texas Ry. Co. operated their respective lines of railway under and in accordance with the written contract between them, which is above set out, until the Chicago, Rock Island & Gulf Company bought out the Texas Company in 1903. (Tr. pp. 42 and 45.) The Chief Train Dispatcher of the defendant located on the line of the Pacific Company at Chickasha, in the Indian Territory, is also the Chief Dispatcher of the Gulf Company, and he controls from his office at Chickasha the movements of all trains on the lines of the Gulf Company in Texas, as well as those operating on the lines of the Pacific Company after they cross the State line going northward. This dispatcher is a joint employe of both of said companies and they each pay a part of his salary. (Tr. pp. 42 and 43.) The train

crews operating trains across the State line between Texas and the Indian Territory do not stop there, but all such trains are operated and they are all moved under the orders of the Chief Dispatcher issued from his office at Chickasha, who directs all operations on the lines of the Gulf Company in Texas. The daily reports of all cars on the lines of said company are made to the dispatcher at Chickasha and the business could not be handled in any other way. (Tr. p. 44.) The settlements between the two companies are all made on a mileage basis. (Tr. p. 43.) Reports are made by the offices of the Gulf Company to the common president of that company and of the defendant company. (Tr. p. 48.) And the Gulf Company keeps its funds on deposit with the defendant company at Chicago. (Tr. pp. 49 and 51.) When the defendant company constructed its line of road down from the north to Red River in 1892 the Texas Company was organized and the Pacific Company furnished the money with which the line was extended southward from Red River into Fort Worth. (Tr. pp. 44 and 47.) At that time, Mr. Low, the General Attorney for the Pacific Company, held in his name all of the stock of the Texas Company except directors' shares, i. e., one share issued to each of the directors on which they each paid $5.00. Most of these directors of the Texas Company were employes of the Pacific Company. (Tr. pp. 44 and 45.) No dividend has ever been paid on any of this stock and when the Gulf Company took over the property of the Texas Company the directors surrendered their stock in the old company and got back what they had paid on it, viz: $5.00 cash. (Tr. p. 46.) The witness did not know and could not state what consideration, if any, the Gulf Company paid for the property of the other Texas Companies, which it purchased under the enabling act passed by the Texas Legislature in 1903. He said that all he knew about the transaction was that he was informed by a letter from Mr. Leeds, the president of the Pacific Company and of the Texas Company, that the Gulf Company was going to take in the other Texas Companies. The witness was not consulted about the transfer but was simply thus informed of the fact. This transfer to the Gulf Company was made to enable all of these Texas roads to consolidate under one management—the management of the system. (Tr. pp. 46 and 47.) Employes who run over the lines of both the Pacific and Gulf Companies while in Texas are employed and discharged by the latter company, and when they are north of the Texas State line they are in like manner employed and discharged by the Pacific Company. (Tr. pp. 48 and 49.) Since the other Texas Companies were absorbed by the Gulf Company these lines have all been operated in connection with the lines of the Pacific Company in the same manner that they were before the cancellation of the contract between said company and the Texas Company. Trains running over said lines are operated now just as they were before the Texas Company ceased to exist and the trainmen operating such trains are paid by the respective companies in the same way that they were formerly paid, i. e., on a mileage

basis. (Tr. pp. 48 and 49.) This witness, on cross-examination, said that lines of the several Texas Companies which were absorbed by the Gulf Company and those of the defendant were not operated as one line, but that they were operated separately and that their revenues were divided on a mileage basis. That the contract, above mentioned, under which the Pacific Company and the Texas Company were formerly operated was canceled in 1903, prior to the time the Gulf Company bought the Texas road. (Tr. p. 50.) On re-direct examination he said: "In order to get a car or locomotive from that part of the tracks of the Gulf Company that was formerly owned by the Texas Company to the part of the tracks of the Gulf Company that were formerly owned by the Mexico Company and the Choctaw, Oklahoma & Texas Company, we would have to send them up through the Territories over the tracks of the Pacific Company or we would have to send them over the tracks of the Fort Worth & Denver Company from Fort Worth to Amarillo and to Dalhart, respectively." (Tr. pp. 42 to 51.)

A copy of the map of the System lines, as shown by the common folder in use by these companies, has been sent up with the record in this case as Exhibit "C," for the inspection of the Court. (Tr. p. 51.) A copy of the map shown on this folder, copyrighted, is kept painted on the front window of the offices of the agents of the Gulf Company, and calendars with that map printed on them are distributed for the purpose of advertising the System lines. (Tr. pp. 43 and 44.) It was upon this state of facts that the judgment of the trial Court sustaining the motion to quash the service and dismissing the cause for want of jurisdiction over the defendant, was predicated. (Tr. pp. 20 to 53.)

From this judgment the plaintiffs in error have sued out the writ of error herein and they now seek a reversal thereof upon the following assignment of error which was duly filed in the trial Court, viz:

ASSIGNMENT OF ERROR.

Now come the plaintiffs in the above entitled cause, by their attorneys of record, and say that in the record and proceedings in said case there are manifest errors to their prejudice, in this:

The Court erred in quashing the service of process on defendant herein and dismissing plaintiffs' said suit and taxing them with the costs thereof, and in holding that this Court had no jurisdiction over the defendant, for the reason that the evidence introduced on the hearing of defendant's motion to quash service, showed conclusively that the defendant is a foreign railway corporation, doing business in the State of Texas as a common carrier of freights and passengers, and that the Chicago, Rock Island & Gulf Railway Co. is the agent of said defendant company in the State of Texas, and that the persons served with process herein were and are the officers and agents of said Chicago, Rock Island & Gulf Ry. Co. and of the defendant company, and that some of the persons so served

with process therein were in the joint service of both the Chicago, Rock Island & Pacific Railway Company and the Chicago, Rock Island & Gulf Ry. Co., and that the service of process upon said agents, as aforesaid, was legal and valid service upon the defendant, the Chicago, Rock Island & Pacific Ry. Co., and was sufficient to compel it to answer in this cause. And for the errors above assigned plaintiffs pray that the judgment and order of this Court quashing the service of citation on defendant and dismissing said suit, be reversed and said cause remanded for further proceedings therein. (Tr. pp. 56 and 57.)

PROPOSITIONS.

First: The evidence adduced on the trial of the issue above presented, was sufficient to show, and did show, that the Chicago, Rock Island & Gulf Railway Company was an auxiliary corporation and a mere creature of the defendant; that it was completely controlled and dominated by defendant and that the lines of railway in Texas which were being operated in the name of the auxiliary corporation were in fact being operated and controlled by the defendant as a part of its system of railways, and that defendant was in fact doing business in Texas in the name of such auxiliary corporation, wherefore service on such corporation was valid service on the defendant, and gave to the trial Court jurisdiction over it.

Second. One corporation may be, and often is, the agent of another; and in this case the evidence was sufficient to show, and it did show, that the Chicago, Rock Island & Gulf Railway Company was the agent in Texas of the defendant, and the service had upon the officers and agents of the Gulf Company constituted valid service on the defendant, and gave to the trial Court jurisdiction over it.

Third. Under the facts established in this case, S. B. Hovey, the Vice-President and General Manager of the Texas corporation, was such an agent of the defendant, as that the service had on him constituted valid service on the defendant, and such service gave the trial Court jurisdiction over defendant.

Fourth. The service had upon F. E. Merrill, the local agent in Tarrant County, Texas, of the Chicago, Rock Island & Gulf Railway Company, was valid service on the defendant and conferred on the trial Court jurisdiction over it.

Fifth. M. E. Sebree, the trainmaster of the defendant, residing in Tarrant County, Texas, was such a local agent of defendant as that service on him constituted valid service on defendant which conferred on the trial Court jurisdiction over it.

Sixth. A. L. Thomas, defendant's conductor, residing in Tarrant County, Texas, was such an agent of defendant as that service on him in said county in accordance with the Texas Statute was valid service on the defendant and conferred on the Court jurisdiction over it.

Seventh. V. N. Turpin, the ticket agent, who was served with citation herein as an agent of the defendant, was such an agent as that service on him constituted valid service on said defendant and same conferred on the trial Court jurisdiction over it.

Eighth. The plaintiffs were citizens of the State of Texas, residing and having their domicile in the city of Fort Worth in the Northern District of said State, while the defendant was a corporation having its domicile and citizenship in the State of Illinois. Wherefore this suit was properly instituted in the district of the plaintiffs' residence; and legal and valid service of citation having been obtained on the defendant in said district; it was the duty of the trial Court to require the defendant to answer herein and to try and dispose of the case on its merits, and said Court erred in refusing so to do. See Barrow Steamship Co. vs. Kane, 170 U. S., 100-113; L. Ed. Book 42, 964.

Ninth. Where the evidence tends to fix a liability on a party who has it in his power to offer evidence of all the facts as they exist and rebut the inference which the proof tends to establish, and refuses to offer such proof, the natural inference is that the proof, if produced, instead of rebutting would support the inference against him. See Penn. Ry. Co. vs. Anoka Nat'l. Bank, 47 C. C. A., 458, and authorities there cited.

BRIEF OF ARGUMENT.

The Texas Statute relating to service of citation on foreign corporations reads as follows, viz:

"In any suit against a foreign, private or public corporation, joint stock company or association, or acting corporation or association, citation or other process may be served on the president, vice-president, secretary or treasurer or general manager, or upon any local agent within this State, of such corporation, joint stock company or association, or acting corporation or association." (Sayles' Texas Civil Statutes, Vol. 1, Art. 1223.)

Sections 2 and 3 of the Act of the Texas Legislature, which took effect on the 12th day of June, 1905, provides as follows, viz:

"Sec. 2. That service may be had on foreign corporations having agents in this State in addition to the means now provided by law by serving citation upon any train conductor who is engaged in handling trains for two or more railway corporations, whether said railroad corporations are foreign or domestic corporations, if said conductor handles trains over foreign or domestic corporations' track across the State line of Texas, and on a track of a domestic railway corporation within the State of Texas, or upon any agent who has an office in Texas and who sells tickets or makes contracts for the transportation of passengers or property over any line of railway or part thereof, or steamship or steamboat of any such foreign corporation or company.

"Sec. 3. For the purpose of obtaining service of citation on foreign railway corporations, conductors who are engaged in handling trains and agents engaged in the sale of tickets or the making of contracts for the transportation of property, as described in Section 2 of the Act, are hereby designated as agents of said foreign corporations or companies upon whom citation may be served." (Acts of the 29th Legislature, Secs. 2 and 3, p. 30.)

It was in pursuance of this Act that service was had on A. L. Thomas, the defendant's conductor, and on V. N. Turpin, the ticket agent. (Tr. pp. 14 to 17 and 29 and 30.)

The Supreme Court of Texas in the case of Buie vs. The Chicago, Rock Island & Pacific Railway Co. passed on and sustained the validity of service of process had on said defendant, by serving S. B. Hovey, then the Vice-President and General Manager of the Chicago, Rock Island & Texas Railway Co., and by serving J. D. Gilfillin, the ticket agent of said company at its station of Bowie in Montague County, Texas, in accordance with Article 1213 of the Texas Statute above quoted. In that case, as in this, each of the parties thus served, by their affidavits filed in the case denied the alleged agency. Upon the issue thus joined, evidence was taken which consisted principally of the depositions of the officers of the Texas Company including that of Mr. Hovey and the contract between the two companies, above set out as Exhibit A. Upon the trial of the issue thus joined the trial Court, as in the case at bar, accepted the affidavits of the alleged agents denying their agency, as outweighing the facts proven and refused to exercise jurisdiction over the defendant, quashed the service and dismissed the case, at the plaintiff's cost. From this judgment the plaintiff appealed to the Court of Civil Appeals which certified the question at issue to the State Supreme Court. That Court after stating the facts proved, says: "The question submitted involves the determination of the fact, was the Texas corporation organized in good faith by its stockholders as an independent corporate body, or was it organized by the Pacific Company, to be used as an instrument by which the foreign corporation might carry on its business in this State? If the trial Court had found that the Texas corporation was the creature of the foreign corporation and had sustained the service of citation and entered judgment against the Pacific Company, that judgment could not have been set aside by this Court for want of evidence to support its jurisdiction of the person of the foreign corporation. But the trial Court having found to the contrary, and having refused to enter judgment against the foreign corporation, this Court cannot hold that the District Court had jurisdiction upon the facts stated, unless the conclusion to be drawn from the evidence is so definite and certain that the trial Court should have treated it as conclusively established. Counsel for the appellees suggest that a transaction by which a foreign corporation would secure control of a domestic corporation in Texas, as here claimed, would be contrary to the constitution and laws of this State, and that this

Court should presume that the agreement and contract between the parties was not intended to be a violation of the constitution and laws of Texas. In answer to a similar proposition, the Court of Appeals of the State of New York said: 'We have of late refused to be always and utterly trammeled by the logic derived from corporate existence where it only serves to distort or hide the truth.' This Court has always refused to be controlled by technicalities when interposed to prevent an investigation into the real facts of a case. Courts will look beneath the mask of legal forms for the real facts of any transaction presented to them for investigation. * * * * If we view these corporations from any standpoint, it will be difficult to distinguish their corporate powers, management, or officers so as to ascribe any function of corporate control to the Texas Company, and we conclude that the Texas Company is but the instrument used by the Rock Island & Pacific Company to carry on its business in Texas. By organizing the Chicago, Rock Island & Texas Railway Company, and through it operating the railroad in Texas, the Chicago, Rock Island & Pacific Railway Company was doing its business in Texas by and through those persons who purported to represent the sub-corporation, and the principal corporation was legally in Texas through its said agents, and was liable to suits in the Courts of this State by service of process upon the agents which represented it in that business. St. Claire vs. Cox, 106 U. S., 350, 1 Sup. Ct., 354, 27 L. Ed., 222; Hatcher vs. Leasing Co. (C. C.), 75 Fed., 368; Manufacturing Co. vs. Kelly, 160 U. S., 327, 16 Sup. Ct., 307, 40 L. Ed., 444; Pennsylvania R. Co. vs. Anoka Nat'l. Bank, 47 C. C. A., 454, 108 Fed. Rep., 482; Norton vs. Railroad Co. (C. C.), 61 Fed., 618; Interstate Tel. Co. vs. Baltimore & O. Tel. Co. (C. C.), 51 Fed., 49; Montgomery vs. Frobes, 148 Mass., 252, 19 N. E., 342; Day vs. Telegraph Co., 66 Md., 365, 7 Atl., 608." * * * * "The authorities cited fully sustain the proposition that, when one corporation makes use of another as its instrument through which to perform its business the principal corporation is really represented by the agents of the sub-corporation, and its liability is just the same as if the principal corporation had done the business in its own name. No one of the facts or circumstances in evidence would, alone, be sufficient to show the Chicago, Rock Island & Pacific Railway Company subject to the jurisdiction of the Courts of this State, but the combined force of all of these facts and circumstances compels the mind to the conclusion that the chartering of the Chicago, Rock Island & Texas Railway Company was a mere mask under which the Pacific Company carried on its business in Texas.

"We answer that upon the service stated and under the facts related in the statement, the District Court of Montague County had jurisdiction to enter a personal judgment in this case against the Chicago, Rock Island & Pacific Railway Company." (65 S. W., 27 and 30 to 32.)

In avoidance of this decision defendant in error will contend that the contract between the two corporations and upon which this decision of the Court was largely predicated was canceled on April 14th, 1903. (Tr. pp. 24 and 50.) To this contention we reply, ostensibly, yes. But it was proved that the properties of the two corporations are yet operated and controlled just as they were before the cancellation of such contract. (Tr. pp. 29, 42, 48 and 49.) All of the stock of the Gulf Company except one share to each of the ten directors is carried on the books of the company in the name of one man, Wm. Wesley Johnson of New York. (Tr. p. 27.) Who this man was, Mr. Hovey could not tell, though said stock was all sent to him to be voted and he voted it at the last preceding meeting of the stockholders. (Tr. p. 43.) The report of the Rock Island Company, the holding company for the System, shows who is the real owner of said stock and who it is that in fact controls and votes it. By this report it is shown that the stock of the Chicago, Rock Island & Gulf Railway Company is in fact owned and controlled by the defendant company and that the lines of the Gulf Company are a part of the "Rock Island System." It further appears that the System is under the domination and control of the holding company above named. (Tr. p. 40.) The report of the defendant company to its stockholders shows conclusively that the Gulf Company is one of the defendant's "auxiliary companies forming said system." And as we construe said report, it conclusively shows that such auxiliary company is completely dominated and controlled and that its lines are in fact operated by the defendant company. (Tr. pp. 37 to 41.) Do not these facts, so clearly proved, show conclusively that the auxiliary company is the agent in Texas of the defendant company and that the latter is in fact doing business in Texas in the name of the former? We submit that they do and that the proved and admitted facts are not susceptible of any other construction. Since the defendant company so completely owns, dominates and controls the auxiliary corporation through its ownership of the stocks and bonds of the latter company the contract above mentioned became useless and its cancellation did not lessen or affect the control of the defendant over the subordinate corporation. If we are right in this contention, it follows that the service had on the officers and agents of the latter company was valid service on the defendant. Buie vs. C. R. I. & P. Ry. Co., above cited, and the authorities there cited and reviewed. See also the following authorities, viz:

Northern Securities Co. vs. United States, 193 U. S., 197.
L. Ed. Book 48, pp. 694, 695 and 696.
Van Dresser vs. Oregon Ry. & Nav. Co., 48 Fed. Rep., 202.
Norton vs. A. T. & S. F. Ry. Co., 61 Fed., 618 (C. C.).
Lehigh Valley Ry. Co. vs. Dupont, 128 Fed., 841 and 845 and 846 (C. C.).
Newcomb vs. N. Y. Cent. Ry. Co., 81 S. W., 1072 and 1073. (Mo.)
Oriental Invest. Co. vs. Barclay, 64 S. W., 87 and 88. (Tex.)

Penn. Ry. Co. vs. Anoka Nat. Bank, 47 C. C. A., 457 and 458.

Hatcher vs. Leasing Co., 75 Fed., 368. (C. C.)

C. & O. Ry. Co. vs. Howard, 178 U. S., 153 to 167, L. Ed. Book 44, pp. 1017 to 1020.

Tuchband vs. C. & A. Ry. Co. (N. Y.), 115 N. Y., 437, 22 N. E., 360.

6 Thom. Corp., Secs. 7505, 8034, 8037 and 8038.

Barrow Steamship Co. vs. Kane, 170 U. S., 100-113, L. Ed. Book 42, 966 to 969.

The facts of the case at bar are strikingly similar to the facts of the Northern Securities Company case above cited. In both cases a holding company was formed and incorporated under the laws of New Jersey which acquired the stock of the constituent railway companies forming the respective systems of railways. In each instance the holding company acquired a majority of the stock of the constituent companies and it thus secured control of such companies through the ownership of such stock.

In the case at bar, the Annual Report of the C. R. I. & P. Ry. Co., above mentioned, shows that the Board of Directors of said company consists of thirteen members, while the Executive Committee of said company consists of eight members. The report of the Rock Island Company, above mentioned, shows that the Board of Directors of said company consists of sixteen members while its Finance Committee consists of six members. Eleven members of the Board of Directors of the Railway Company are also members of the Board of Directors of the Rock Island Company. Five members of the Executive Committee of the Railway Company are also members of the Finance Committee of the Rock Island Company. All of the officers of the Rock Island Company as given in said report of said company were, with two exceptions, shown to be also officers of the Railway Company, as disclosed by the report of said company.

These reports show that a majority of the officers and directors of each of said companies are common to both of them.

Uniformity in the management and control of such companies, was thus effectively lodged in the holding company and all competition between the subordinate corporations was effectively stifled since the same individuals controlled and managed the holding company and all of the constituent companies. These subordinate companies were thus all placed under one management and their existence as independent companies ceased. In the Northern Securities Company case, this Court said: "By this purchase of stock, the Great Northern and Nothern Pacific acquired full control of the Chicago, Burlington & Quincy main line and branches." 193 U. S., p. 321, L. Ed. 48, 694. After summarizing the facts, the Court continues:

"Necessarily by this combination or arrangement the holding company in the fullest sense dominates the situation in the interest of those who were stockholders of the constituent companies; as

much so for every practical purpose, as if it had been itself a railroad corporation which had built, owned, and operated both lines for the exclusive benefit of its stockholders. Necessarily, also, the constituent companies ceased, under such a combination, to be in active competition for trade and commerce along their respective lines, and have become practically, one powerful consolidated corporation, by the name of a holding corporation, the principal, if not the sole, object for the formation of which, was to carry out the purpose of the original combination under which competition between the constituent companies would cease." (193 U. S., p. 694.)

We submit that this language is applicable to, and properly characterizes the combination disclosed by the evidence in the case at bar. In the case of Chesapeake & Ohio Ry. Co. vs. Howard, this Court in discussing a somewhat similar combination of railway companies says: "The evidence shows that in each of the three corporations there was but one controlling and guiding hand; that all the steps taken were steps in the direction of establishing, organizing and maintaining a continuous line of road from one ocean to the other, and that the various contracts, arrangements and leases were but means to accomplish this one purpose." (178 U. S., p. 1020.)

In the case of Lehigh Valley Ry. Co. vs. Dupont, above cited, the Circuit Court of Appeals of the Second Circuit, in passing on the sufficiency of the facts to sustain the judgment rendered, used the following language, namely: "The title to the franchises, privileges and property of the Easton & Amboy Railroad Company was vested in that corporation, and the railroad upon which the deceased was killed, was operated and maintained financially and physically by that corporation; but the potential and ultimate control of all its property and business affairs was lodged in the defendant, and this control was exercised as completely and as directly as the machinery of corporate organism would permit. Inasmuch as, under the laws of New Jersey, the Easton & Amboy Railroad Company was incable of transferring to the defendant its franchises, privileges and property and the defendant could not acquire them, the defendant was not in legal contemplation the owner nor operating the Easton & Amboy Railroad. But the law does not prevent one railroad corporation from making a contract with a passenger to carry him beyond its own road and upon or over the connecting roads of another railroad corporation and assume toward him all the ordinary obligations of a passenger carrier during the transit. The contract being incidental to one to carry him over its own road, is not ultra vires. Nor is it ultra vires for a railroad corporation to agree with other railroad corporations upon such terms of co-operation in transacting their joint business as may be satifactory. And where the lines of several railroad corporations are conducted as a single system for the purpose of the traffic between different points originating upon either, the corporations may constitute themselves a partnership for the business of such traffic; and when they do, although the general management of each road is retained by the

corporation owning it, the several corporations are, as to such business, partners, and liable upon the principles of the law of agency. When a relation of joint and several agency exists in a system of dominant and subordinate carriers, the dominant carrier is liable for all breaches of obligation by any of the other constituent carriers in the performance of a contract made by it for the transportation of passengers or freight. These propositions are established by the following authorities: Swift vs. Pacific Mail Steamship Co., 106 N. Y., 206, 12 N. E., 583; Philadelphia etc. Ry. Co. vs. State, 58Md., 372; Wyman vs. Chicago etc. R. Co., 4 Mo. App., 578; Bradford vs. So. Car R. Co., 7 Rich. Law, 201, 62 Am. Dec., 411; Harris vs. Cheshire R. Co. (R. I.), 16 Atl., 512; Block vs. Fitchburg R. Co., 139 Mass., 308, 1 N. E., 348; Independent Mills Co. vs. Burlington etc. Ry. Co., 72 Iowa, 535, 34 N. W., 320, 2 Am. St. Rep., 258; Cincinnati R. Co. vs. Spratt, 2 Duv. (Ky.), 4; Barter vs. Wheeler, 49 N. H., 9, 6 Am. Rep., 434. We find nothing inconsistent with these propositions decided in Pennsylvania R. Co. vs. Jones, 155 U. S., 333, 15 Sep. Ct., 136, 39 L. Ed., 176. Especially should the dominant corporation be regarded as the principal and the constituent corporation as agent when, as in this case, the dominant corporation ultimately derives all the profits and incurs all the losses arising from the traffic originating on any of the lines. We conclude that the relations of the defendant with the Easton & Amboy Railroad Company in respect to the traffic originating on the lines of either, were those of a principal and its agent." (128 Fed. Rep., pp. 845 and 846.)

In the case of Norton vs. A. T. & S. F. Ry. Co., the Circuit Court of the Southern District of California in passing on a motion to quash the service of summons upon a statement of facts very similar to those in the case at bar, denied the motion and held the service sufficient to compel the defendant to answer. The Court in that case held: "A foreign railroad company which runs its trains over the tracks of other companies, forming with it a 'system' or 'route' into California, and there solicits and obtains freight and passenger business through the general manager of one of the subordinate companies and his assistants, may be legally served by service upon him as the 'managing and business agent' in the State (Code Civ. Proc. Cal., Sec. 411), of such foreign company, although it has never directly designated him as its agent." (61 Fed. Rep., p. 618.)

In the case of Van Dresser vs. Oregon Ry. & Nav. Co. the Circuit Court in passing on the sufficiency of the service to compel the defendant to answer, held:

1st. "The Union Pacific Railway Company, having formed a combination, under the name of the 'Union Pacific System' with various other companies, including the Oregon Short Line Company, which operates a railroad in Washington, and being engaged in making contracts therein for freight and passenger service under the name of the system, must be considered as doing business in that State, and a service of summons upon an agent therein, who is

authorized to act for all the companies of the system, is a service upon the corporation.

2nd. "When a domestic corporation owning a railroad in the State leases the same to another company without the authority or consent of the State, but continues its corporate existence, and receives a revenue under the lease, its lessee must be considered as its agent to carry on the business; and in an action for a tort committed in operating the road, service of summons upon the agents of the lessee is service upon the lessor company.

3rd. "When a State law provides that service may be made upon a foreign corporation doing business therein by serving the summons upon its agents, any foreign corporation subsequently doing business in the State is deemed to consent to this condition, and is bound by a service in the method prescribed.

4th. "The rules of precedure prescribed by the State for obtaining service upon a foreign corporation doing business therein govern the Federal Courts, and service in the manner prescribed confers upon them jurisdiction over such corporation." (48 Fed. Rep., 202.)

In the case of Newcomb vs. New York Cent. H. R. Ry. Co. the action was brought in the Circuit Court of Missouri and service was had on the defendant by serving two domestic corporations as the agents of the foreign corporation. The latter plead to the jurisdiction of the Court over it and sought to quash the service on two grounds, viz: "First, that the statements in the sheriff's return are not true as the affiants show. Second, on the face of the return the defendant is not legally summoned." In passing on the second proposition thus presented the Supreme Court of Missouri said: "As to the return itself there are several points urged against its sufficiency, viz: That a corporation is not an agent for another corporation, within the meaning of Section 570, Rev. St. 1899, relating to service of process on a foreign corporation; therefore, the alleged service on the two railroad companies named as agents in the return is illegal. That the return does not show that defendant is a foreign corporation, or that it has no office or place of business in this State, or that Saffarans is the kind of agent contemplated by the statute. The statute in question is part of Section 570, Rev. St. 1899. Fourth, when defendant is a corporation or joint stock company organized under the laws of any other State or country and having an office, or doing business in this State, the summons may be executed by delivering a copy of the writ and petition to any officer or agent of such corporation or company in charge of any office or place of business, or, if it have no office or place of business then to any officer, agent or employe in any county where such service may be obtained, etc." * * * * "If the statute is construed to mean that only an individual can act as the agent to receive service of process for the foreign corporation, then the foreign corporation, by selecting another corporation through whom to transact its business here, may escape service of process altogether. The statute is comprehensive enough to include a corpora-

tion in the term 'agent' and, if the writ is to be served on a corporation as agent, it must be served in the manner of serving corporations in their own behalf, for there is no other way in which to serve them. We hold that if a foreign corporation transacts business here through the agency of another corporation, it may under Section 570, Rev. St. 1899, be served with process through that agency." (81 S. W., pp. 1072 and 1073.)

In the case of Oriental Investment Company vs. Barclay, the defendant company, a Missouri corporation, had leased to the Oriental Company, a Texas corporation, a hotel located in Dallas, Texas. The plaintiff, an employe of the latter company, was injured by the falling of an elevator. The defendant plead that the lessee was operating the property and was alone responsible for its negligence. The plaintiff charged that the Texas corporation was a mere creature of the lessor company and that same was owned and controlled and dominated by the Missouri corporation. The issue thus raised was determined against the defendant and on appeal the Appellate Court in passing on the question thus presented, said: "If the relation between the investment company and the operating company, the Oriental, was a mere cloak to cover up fraud, then there can be no doubt but the Court is authorized to ignore the apparent relation between the parties in order to circumvent the fraud. (Cook, Corp., Secs. 6, 663.) And in the absence of fraud it has been held that where a railroad company cause a telegraph company to be incorporated, and subscribed to all of its stock, and appoints all of its officers, and holds it out as the future owner of a telegraph system which the railroad owns, and then sells that system to some one else, a person contracting with the telegraph company on the faith of the scheme being carried out may hold the railroad company liable on the contract, on the principle of the principal being liable on the contracts of its agent. Interstate Tel. Co. vs. Baltimore & O. Tel. Co. (C. C.), 51 Fed., 49; Baltimore & O. Tel. Co. vs. Interstate Tel. Co., 4 C. C. A., 184, 54 Fed., 50. Again, it is held that where the corporation does business by organizing branch corporations, and the stockholders in the latter are disregarded, and the main corporation pays up the stock and manages without regard to its corporate character, the property of the branch corporation, it is subject to the debt of the parent company. Day vs. Telegraph Co., 66 Md., 354, 7 Atl., 611. If a company leases all of its property to another, the stockholders in both being the same, a mechanic's lien good against the latter company is also good as against the company owning the property. Hatcher vs. Leasing Co. (C. C.), 75 Fed., 368." (64 S. W., pp. 87 and 88.)

The judgment of the trial Court was affirmed and a writ of error was denied by the Supreme Court. (64 S. W., pp. 87 and 88.)

In Thomp. on Corps. the principle contended for is stated as follows, to-wit: "It is very clear that the relation between the parent corporation, so to speak, and a sub-corporation, organized to exploit its business in another State, may be that of principal and

agent. Indeed, the subordinate corporation may be a mere dummy, created by the principal corporation to effect its purposes, in such a sense that the principal corporation will be liable for its debts, and even for its torts." (6 Thomp. Corp., Sec. 8034.)

"It has been frequently held that where a foreign corporation does business within the domestic State, the person who, as its agent, does that business, should be considered its 'managing agent' for the purpose of serving process against it under such a statute; and more especially so where the foreign corporation has an office or place of business within the domestic State, which office is in charge of such agent, who acts for the corporation. He is there doing business for it, managing its business, and is regarded, in every sense of the word used in the statute, as its 'managing agent.' Such person is an agent of the corporation, within the meaning of a general statute permitting process against it to be served upon an officer, director, agent, clerk or engineer of the corporation. This principle is embodied in a statute of Texas, applicable alike to domestic and to foreign corporations under which a foreign corporation may be sued in that State if it carries on business there, by service of process on its local agent within the county where such local agent carries on its business." (6 Thomp. Corp., Sec. 8038.)

We assume that these authorities are sufficient to establish the proposition contended for by the plaintiffs in error, viz: 1st, that one corporation may act as the agent for another.

2nd. That service may be had on the principal corporation by serving the subordinate corporation as an agent.

3rd. That process is properly served on such subordinate corporation and through it on its principal, by serving its officers or agents in the same manner as if it were itself the defendant.

4th. That such officers and agents of the subordinate corporation will be treated as agents of the dominant corporation and service of process on them as such agents in the manner prescribed by the statute, will constitute valid service on the defendant.

5th. We submit that the facts established by the agreement of counsel for the defendant and by evidence that was undisputed, shows conclusively that the Chicago, Rock Island & Gulf Railway Company was and is controlled and dominated by defendant in such a way and to such an extent as to make it such a local agent of defendant in Texas as is contemplated by Art. 1223 of the Texas Statutes, above quoted, and we further submit that such facts show conclusively that S. B. Hovey, F. E. Merrill and M. E. Sebree who were severally served with process in this case were each and all such agents of defendant as is contemplated by said statute. It appears to us that the statements contained in the defendant's report to its own stockholders to the effect that the Chicago, Rock Island & Gulf Railway Company was one of the auxiliary companies forming the "Rock Island System," and that the lines of such company were operated by said system, should forever settle the question at issue against the defendant. (See Tr. 37 to 39.) If we are

right in this contention, it follows that the judgment of the trial Court was erroneous and that it should be reversed and the case remanded for a trial on the merits. If, however, it should be held that we are in error as to some of the propositions contended for, we nevertheless submit that the service of process had upon A. L. Thomas, defendant's conductor, and on V. N. Turpin, its ticket agent, was valid, and was such as to require defendant to appear and plead to the merits of the case. No objection was urged to the manner or form of the service on these alleged agents, but the validity of the service was assailed solely upon the following grounds, viz: 1st, It was denied that either of these parties at the time of the service on them were agents or employes of the defendant in Texas, and 2nd, it was asserted that the statute authorizing such service was insufficient to sustain a personal judgment against the defendant. See defendant's Supplemental Motion to quash the service in question. (Tr. p. 17.) The affidavits of the parties thus served were attached to said motion as a part thereof, and it was shown by the affidavit of A. L. Thomas "That he is and has been for a number of years a passenger conductor, residing at Fort Worth, Texas, running over the line of the road of the Chicago, Rock Island & Gulf Railway Company and of the Chicago, Rock Island & Pacific Railway Company between Fort Worth, Texas, and Caldwell, Kansas. That he is employed by each company while running on its line of road, and paid by each company for the service rendered it. That he runs from Fort Worth, Texas, to the Texas State line over the line of the Chicago, Rock Island & Gulf Railway Company, and that from the Texas State line to Caldwell, Kansas, he runs over the line of the Chicago, Rock Island & Pacific Railway Company." (Tr. p. 18.)

By the affidavit of V. N. Turpin it was shown "that he is and has been for a long time the city ticket agent of the Chicago, Rock Island & Gulf Railway Company, in Fort Worth, Texas, and that in the performance of his duties as such he has sold and customarily sells tickets good for passage over the line of the Chicago, Rock Island & Gulf Railway Company, and any other connecting lines which the purchaser desires to travel over, and that he has thus sold tickets over the Chicago, Rock Island & Gulf and the Chicago, Rock Island & Pacific Railway Company's lines." (Tr. p. 19.)

It is thus made to appear affirmatively that the parties thus served with process at the time of such service, sustained to the defendant the exact relation prescribed by Texas Statute regulating such service. It is further apparent that such statute was enacted to provide for the service of process in just such cases as this one and to meet the conditions here presented. The real question at issue, therefore, is: Had the Texas Legislature the power to enact such law? If yea, then the service on Thomas and Turpin was valid service on the defendant.

In Barrow Steamship Co. vs. Kane, 170 U. S., pp. 107 and 108,

L. Ed. 42, p. 967, this Court speaking through Mr. Justice Gray, said: "The manifest injustice which would ensue, if a foreign corporation, permitted by a State to do business therein, and to bring suits in its Courts, and thus, while allowed the benefits, be exempt from the burdens, of the laws of the State, has induced many States to provide by statute that a foreign corporation making contracts within the State shall appoint an agent residing therein, upon whom process may be served in actions upon such contracts. This Court has often held that wherever such a statute exists service upon an agent so appointed is sufficient to support jurisdiction of an action against the foreign corporation, either in the Courts of the State, or, when consistent with the acts of Congress, in the Courts of the United States held within the State; but it has never held the existence of such a statute to be essential to the jurisdiction of the Circuit Courts of the United States. Lafayette Ins. Co. vs. French, 59 U. S., 18; How. 404 (15: 451); Ex parte Schollenberger, 96 U. S., 369 (24: 853); New England Mut. L. Ins. Co. vs. Woodworth, 11 U. S., 138, 146 (28: 379, 382); Shaw vs. Quincy Mining Co. (Ex parte Shaw), 145 U. S., 444, 452 (36: 768, 772)."

In New York & C. Ry. Co. vs. Estill, this Court in passing on the vaiidity of service made under, and in accordance with a State statute similar to the one under consideration, said: "The principle applicable under such circumstances is, that, if the corporation does business in the State, it will be presumed to have assented to the statute and will be bound accordingly." (147 U. S., 607, L. Ed. 37, 301.) To the same effect is the holding in ex parte Schollenberger, 96 U. S., 369, L. Ed. 24, 853 to 855. In R. R. Co. vs. Harris, 12 Wall., 65, L. Ed. 20, 354, the Court said: "It (a corporation) cannot migrate but may exercise its authority in a foreign territory upon such conditions as may be prescribed by the law of the place. One of these conditions may be that it shall consent to be sued there. If it do business there it will be presumed to have assented and will be bound accordingly."

In Insurance Co. vs. French, 18 How., 404 and 409, L. Ed. 15, 453, it is said: "Process can be served on a corporation only by making service thereof on some one or more of its agents. The law may and ordinarily does designate the agent or officer on whom process is to be served. For the purpose of receiving such service and being bound by it the corporation is identified with such agent or officer. The corporate power to receive and act on such service so far as to make it known to the corporation is thus vested in such officer or agent." To the same effect is the decision of the U. S. Circuit Court in the case of Dizzy vs. Ill. Cent. Ry. Co., 61 Fed. Rep., 52 and 53. In Merchants Mfg. Co. vs. Ry. Co., 63 How. Pr. (N. Y.), 459, it was held, that a foreign corporation consents to be amenable to suits by such mode of service as the law of the State provides when it invokes the comity of the State for the transaction of its business.

In Van Dresser vs. Oregon Ry. & Nav. Co., 48 Fed. Rep., 205, it is said: "By numerous decisions, it is established as a part of the common law of this country, that where a State makes conditions upon which foreign corporations may do business and provides a method whereby the Courts of the State may acquire jurisdiction over them by service of process upon designated agents within the State, a foreign corporation subsequently doing business in the State is deemed to consent to the conditions and to be found by the service of process in the manner specified by the statute."

The Indiana Statute of 1853 authorized service of process on a railway company to be made by serving a conductor of one of its trains. This statute was held to be valid and such service was held to be sufficient to require the defendant to appear and answer to a summons thus served, in the following cases, viz: Railway Co. vs. Grooms, 90 Ind., 245; Railway Co. vs. Tilton, 12 Ind., 4; Railway Co. vs. Powell, 13 Ind., 273; Railway Co. vs. McDougall, 108 Ind., 180. Service had upon a conductor in accordance with a statute of Michigan has been held to be valid by the Supreme Court of that State. Fowler vs. Railway Co., 7th Mich., 79. Such service has likewise been upheld in Illinois Railway Co. vs. Keep, 22 Ill., 15 and 16. We submit that the foregoing authorities conclusively establish the following propositions, viz: First, that the Legislature of the State of Texas had the power and authority to designate the officers, agents and employes of foreign corporations doing business in the State upon whom service of process can be had. Second, that it had the power and authority to designate the conductors engaged in handling the defendant's trains across the State line into said State, and the ticket agents in the State who are engaged in selling tickets and making contracts for transportation over defendant's line of railway, or any part thereof; as agents of defendant upon whom service of process might be had, and Third, that the service had in accordance with such statute on such conductor and ticket agent, was valid and binding on the defendant provided it was in fact doing business in Texas. Assuming these propositions to be established, the only question to be determined is, was the defendant in fact doing business in Texas at the time of the service in question? If yea, such service was unquestionably valid. That A. L. Thomas at the time of the service of citation on him was a train conductor who was engaged in handling trains belonging to defendant, for it and for the Chicago, Rock Island & Gulf Ry. Co., and that he handled such trains over the tracks of both the foreign and domestic corporations and across the State line of Texas and on the track of the domestic corporation in said State, is an admitted fact. (Tr. pp. 18 and 29 and 30.) That V. N. Turpin at the time of the service on him was a ticket agent who had an office in Texas, and who sold tickets and made contracts for the transportation of persons and property over the defendant's lines of railway and all of its connections was likewise an admitted fact. (Tr. pp. 19 and 30.) That the

Chicago, Rock Island & Gulf Railway Company was one of the defendant's auxiliary companies, was also a conceded fact. (Tr. pp. 37 to 39.) That the defendant company was the owner of at least a majority of the capital stock of all its subsidiary companies forming the "Rock Island System," among which was the Chicago, Rock Island & Gulf Ry. Co., was proven by the report of the "Rock Island Company," the holding company for the Rock Island System, made to its stockholders. The correctness of this report was not disputed. (Tr. pp. 40 and 41.) That the Rock Island Company was practically the owner of all of the capital stock of all the constituent companies comprising the Rock Island System was also shown by said report. (Tr. pp. 40 and 41.) That all of the officers of the Rock Island Company, with two exceptions, were also officers of defendant company and that a majority of the officers and directors of each of said companies are common to both of them, was shown by the reports of said companies to their respective stockholders. It was thus made apparent that the entire Rock Island System of Railways was under one management and that it was in fact under the control of the same individuals. (Tr. p. 41.) It was admitted that when the lines of the Texas corporation were originally constructed, the money used in such construction was furnished by the defendant, and it is abundantly proved that said lines were in fact construed under its supervision. (Tr. pp. 24 and 25.) The Texas corporation upon its organization elected as its officers a number of the defendant's old employes who had been in its service for several years. (Tr. pp. 24 and 25.) Soon after it was thus organized the Texas Company and the defendant entered into the written contract above set out, whereby the control of the latter over the former was secured and provided for. (Tr. pp. 30 to 36.) This contract remained in force and was observed until after it was denounced by the State Supreme Court in the Buie case, above cited. (Tr. p. 24.) Thereupon it was formally canceled, but the lines of the two companies were in fact thereafter operated just as they were before such cancellation. (Tr. 48-49.) The expenses incurred by, and the revenues derived from, the joint operation of the lines of the two companies are borne by, and divided between, said companies on mileage basis just as they were divided under the original agreement. (Tr. pp. 49 and 50.) Each company thus shares in the profits and losses of the common enterprise. In the case of the Lehigh Valley Ry. Co. vs. Dupont decided by the Circuit Court of Appeals of the Second Circuit, it was held that "Where the lines of several railroad corporations are conducted as a single system for the purpose of the traffic between different points, originating on either, and such corporations divided the proceeds of such business on a mileage basis, the several corporations as to such business were partners and liable to third persons on the principles of the law of agency." 128 Fed. Rep., 841. The deceased engineer, on account of whose death this action was brought, it was alleged was at the

time of his death an employe of the defendant serving as a locomotive engineer on one of defendant's trains running on the division between Fort Worth and Chickasha. (Tr. p. 3.) He therefore was in the joint service of the defendant and of the Texas Company, each of which paid him for his services in proportion to the number of miles he ran over their respective lines. (Tr. p. 49.) North of the Texas State line he was called an employe of the defendant while south of that line he was denominated an employe of the Texas Company. His employers were thus ostensibly changed instantly whenever he crossed said line. However he continued to wear the uniform and the badges of the defendant company on both sides of said line (Tr. p. 26), and he was subject to be discharged from the service of both companies by either one of them. (Tr. p. 48.) The movements of his train over the track on both sides of said line were all controlled by the joint train dispatcher located at Chickasha, and such trains were all made up under the orders of the joint trainmaster located at Fort Worth. The same thing was true of all other trains and trainmen running across said line. (Tr. pp. 26, 28, 42 to 44 and 51.)

In view of these conceded and proved facts, how can it be successfully contended that defendant was not doing business in Texas within the purview of the Texas statute? The Supreme Court of Texas upon a state of facts similar to, but less conclusive and cogent, than are the facts in this case, explicitly held that "no one of the facts or circumstances in evidence would alone be sufficient to show the Chicago, Rock Island & Pacific Railway Company subject to the jurisdiction of the Courts of this State but the combined force of all these facts and circumstances compels the mind to the conclusion that the chartering of the Chicago, Rock Island & Texas Railway Company was a mere mask under which the Pacific Company carried on its business in Texas." It was therefore held, that the trial Court by the service of its process on the agents of the Texas Company, acquired jurisdiction over the Chicago, Rock Island & Pacific Railway Company, to enter a personal judgment against it. See Buie vs. C. R. I. & P. Ry. Co., 65 S. W. Rep., 31 and 32. This decision has settled the question at issue in the State Courts. But the contest is renewed in the national Courts. Will not these Courts in construing a State statute follow the construction placed thereon by the State Courts? Such we understand to be the ruling of this Court. York vs. State of Texas, 137 U. S., 15-21, L. Ed. 34, 604; B. & O. Ry. Co. vs. Baugh, U. S. Book 37, 774.

In Penn Ry. Co. vs. Anoka Nat'l. Bank, 47 C. C. A., 457, the Circuit Court of Appeals of the Eighth Circuit, Caldwell, C. J., delivering the opinion of the Court stated the question there at issue as follows: "The goods were lost on the line of the last carrier, and the only material contested question of fact in the case was whether the defendant was the last carrier, or was liable as such. The plaintiff maintained that it was. The defendant maintained that it

was not, but that the Philadelphia, Wilmington & Baltimore Railroad Company was the last carrier, and carried the goods from Baltimore to Frederick Road, where they were lost." Upon the question thus presented, the Court said:

"While the Philadelphia, Wilmington & Baltimore Railroad Company is a separate legal entity, according to the testimony, it sustained towards the defendant company the relation of a dummy more nearly than that of an independent, self-governing railroad company. Upon the testimony the jury might well find that the corporate existence of the Philadelphia, Wilmington & Baltimore Railroad Company was maintained by and for the use of the defendant company, and that the defendant company held it out to the world as a part of its system, for whose acts it was responsible. We think the jury might rightfully infer from the evidence that, if a recovery could be had against the Philadelphia, Wilmington & Baltimore Railroad Company on the plaintiff's claim the result to the defendant in a financial sense would be precisely the same as if the recovery had been against it. It seems highly probable from the testimony that the losses and gains of the Philadelphia, Wilmington & Baltimore Company are in the end the losses and gains of the defendant company. As before stated, the officers of the two roads are very largely the same persons, and the dominion of the Pennsylvania Railroad Company, the plaintiff in error, over the Philadelphia, Wilmington & Baltimore Company, seems to have been complete and unquestioned. At least there was evidence from which a jury might rightfully infer such was the case. The defendant company, of course, knew exactly the relation it sustained to the Philadelphia, Wilmington & Baltimore Company, and, if it was not such as the mass of testimony introduced by the plaintiff strongly tended to show it to be, it was open to it to produce convincing evidence of the fact, and show precisely what the relation was; and, not having done so, every inference warranted by the evidence may justly be indulged against it. Where the evidence tends to fix a liability on a party who has it in his power to offer evidence of all the facts as they existed, and rebut the inferences which the proof tends to establish, and he refuses to offer such proof, the natural inference is that the proof, if produced, instead of rebutting, would support the inference against him." (Pages 457 and 458.)

This language may be properly applied to the case at bar. Upon what theory the learned trial Judge predicated his ruling we are at a loss to know. But we suspect that he has misconstrued the decision rendered by this Court in the case of Pullman Palace Car Co. vs. Mo. Pac. Ry. Co., 115 U. S., 587 to 598, L. Ed. 29: 499. In that case the Pullman Company sued the Railway Company to enjoin the latter and the St. Louis, Iron Mountain & Southern Ry. Co. from discontinuing the use of the former's cars on the line of the St. Louis, Iron Mountain & Southern Railway Company.

It was charged that the Pullman Company had entered into a written contract with the Mo. Pac. Ry. Co. whereby it was agreed that the plaintiff should have the exclusive right for a period of fifteen years from the date of the agreement to furnish the defendant with drawing-room and sleeping cars sufficient to meet all the requirements of travel on all passenger trains of the defendant over its entire line of railway and on all roads which it controls or may hereafter control by ownership, lease or otherwise. That said defendant by said agreement bound itself not to contract with any other company to haul cars of the same class in its trains for the time specified. This agreement, which was dated March 8th, 1877, was made by the plaintiff with the original Missouri Pacific Ry. Co. But it was further shown that this company was subsequently reorganized and was consolidated with certain other railroad companies and the lines of all such companies were consolidated into a single system. The reorganized company took the name of the Missouri Pacific Railway Company, but the original company of that name and with which plaintiff made its contract ceased to exist with the reorganization. Subsequently the new company acquired a majority of the stock of the St. Louis, Iron Mountain & Southern Ry. Co. and thereafter the two properties were under the same general management but they were each operated independently, the one of the other. The Pullman Company had with the Iron Mountain Company, a contract for the use of its cars on the lines of that company similar to that which it had with the original Missouri Pacific Company, which contract had expired and which the Iron Mountain Company had declined to renew. The purpose of the plaintiff's bill was to force this latter company through its connection with the Missouri Pacific Company to continue the use of the Pullman cars on the lines of the Iron Mountain Company and to enjoin it from discontinuing the use of its cars. The Court stated the question presented for its decision as follows, to-wit: "1. Whether the contract between the Missouri Pacific and Pullman Companies made before the consolidation binds the consolidated company to haul the Pullman cars over the road of the St. Louis, Iron Mountain & Southern Company if that road is controlled by the consolidated company within the meaning of the contract, and 2nd, whether it is so controlled by the consolidated company." Upon the question thus presented the Court says: "The new company assumed on the consolidation all the obligations of the old Missouri Pacific. This requires it to haul the Pullman cars, under the contract, on all roads owned or controlled by the old Company at the time of the consolidation, but it does not extend the operation of the contract to other roads which the new company may afterwards acquire. The power of the old company to get the control of other roads ceased when its corporate existence came to an end, and the new company into which its capital stock was merged by the consolidation undertook only to assume its

obligations as they then stood. It did not bind itself to run the cars of the Pullman Company on all the roads it might from time to time itself control, but only on such as were controlled by the old Missouri Pacific. Contracts thereafter made to get control of other roads would be the contracts of the new consolidated company, and not of those on the dissolution of which that company came into existence. It follows that the present Missouri Pacific Company is not required by the contract of the old company, to haul the Pullman cars on the road of the St. Louis, Iron Mountain & Southern Company, even if it does now control that road, within the meaning of the contract.

"We are also of the opinion that the railroad of the St. Louis, Iron Mountain & Southern Company is not controlled by the present Missouri Pacific Company in such a way as to require that company to haul the Pullman cars over it, if the contract is binding on the new company to the same extent it would be on the old were that company still in existence and standing in the place of the new. Confessedly, the St. Louis, Iron Mountain & Southern Company keeps up its own corporate organization. It operates its own road. It has its own officers and makes its own bargains. The Missouri Pacific owns all its stock, and in that way can determine who shall constitute its boards of directors; but there the power of that company over the management stops. The board when elected has controlling authority, and for its doings is not necessarily answerable to the Missouri Pacific Company. The two roads are substantially owned by the same persons and operated in the same interest, but that of the St. Louis, Iron Mountain & Southern Company is in no legal sense, controlled by the Missouri Pacific." (Ib.) L. Ed. (29: 501 and 502.)

Is the decision rendered in that case decisive of the question presented in the case at bar? Counsel for defendant in error so contend and the trial Court seems to have sustained the contention. This ruling we submit was erroneous. In that case no actual control of the Iron Mountain Company and of its property by the Missouri Pacific Company was shown. But on the contrary, it appeared that the former company in fact operated its own road, had its own officers and made its own bargains. In the case at bar, we contend that the undisputed facts show that the Chicago, Rock Island & Pacific Railway Company not only actually dominates and controls the Chicago, Rock Island & Gulf Railway Company but that it, in fact, operates, in the name of said company all of the Texas lines embraced in the Rock Island System. In other words, the evidence in the present case, as we construe it, conclusively shows that the defendant at the time of the service on its alleged agents was doing business in Texas under the name and pseudonym of its auxiliary company. We therefore submit that the Trial Court by the service in question acquired jurisdiction over the defendant and that it

erred in refusing to take and exercise such jurisdiction and in refusing to try the case on its merits. For this error we pray that the judgment of the Trial Court be reversed and that the case be remanded for a trial on the merits.

Respectfully submitted,

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